

INDIAN RIGHTS ASSOCIATION,  
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PHILADELPHIA, PA.

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## THREATENED EXPLOITATION OF PIMA INDIANS

The Indian Rights Association is vigorously supporting the Pima Indians in protesting against the threatened leasing of 50,000 acres of their irrigable lands on the Gila River Reservation in Arizona, by the Commissioner of Indian Affairs, to outside parties without their knowledge or consent and against their wishes.

It transpires that the Acting Commissioner of Indian Affairs entered into an agreement with one W. R. Elliot, of Phoenix, Arizona, upon November 22, 1919, which was approved the same day on behalf of Hon. Franklin K. Lane, then Secretary of the Interior, by S. G. Hopkins, Assistant Secretary, by the term of which, among other things, Elliot or his assigns, in conjunction with the Superintendent or other officer in charge of the Gila River Reservation, should have the right to select 50,000 acres of the irrigable lands of the Pima Indians on said Reservation and to lease the same for a term of ten years. Elliot agreed to provide, at his own expense, such wells as might be needed to irrigate the land so leased, and the electric power necessary to operate them.

This land, when properly irrigated, is, without doubt, the finest cotton-growing land in the world. The rental specified by the agreement to be paid to the Indians, for the lands thus taken, is that at the expiration of the ten year term specified by the lease, *if the lease is not renewed by the Commissioner of Indian Affairs*, all equipment for the transmission of electric power, motors, pumps, fences, etc., provided by the said Elliot, shall become the property of the Government, for the benefit of the Indians on the Gila River Reservation, and that not less than one-fourth of each tract (ten acres) in cultivation shall, at the expiration of the lease, be

left "in a good stand of alfalfa"; that the owners of all cultivated tracts not seeded to alfalfa shall receive the equivalent in cash of the cost of such seeding. As the Commissioner of Indian Affairs has stated that the cost of seeding the land with "a good stand of alfalfa" is \$5.00 per acre, this means that, if the Commissioner is correct, aside from having his ten acre tract cleared, leveled and ditched, all the Indian will get out of this lease is that after remaining without any rent or other direct compensation for a period of ten years, he will then receive the equivalent of \$1.25 per acre for the lands leased, or said sum in cash,—*a rental of twelve and one-half cents per acre per annum*, payable in kind or cash, at the expiration of ten years, at the option of Elliot or his assigns.

Not only so, but if the Indian is for any cause too blind or ignorant to appreciate the munificence of this "rental," the Commissioner of Indian Affairs is anxious to assist him to a decision in favor of the lease. The agreement further provides that after the approval by the Commissioner of the selections of lands made by Elliot, the latter is thereby "authorized to negotiate leases for periods of ten years with the respective Indian allottees—AND THE SUPERINTENDENT WILL RENDER ALL POSSIBLE ASSISTANCE IN SO DOING." If the Indian fails to appreciate this generosity, then "THE SAID SUPERINTENDENT IS HEREBY AUTHORIZED TO SIGN LEASES IN BEHALF OF MINORS AND UNDETERMINED HEIRS, AND FOR SUCH OTHER INDIANS AS MAY NOT BE PREPARED TO DEVELOP THEIR LAND SUFFICIENTLY FOR AGRICULTURAL PURPOSES AND WHO FAIL OR REFUSE TO EXECUTE LEASES COVERING SUCH LANDS." (The capitals in the foregoing quotations are our own.) Incidentally, if "the said superintendent" should not prove to be sufficiently pliant and use this vast arbitrary authority in the interest of the Contractor, it might be expected that influences strong enough to secure the approval of the agreement would be able to have him superseded by some one who would "take orders."

As if all this was not enough, there was an additional provision that "if upon the expiration of any leases made in conformity with this agreement, it shall be deemed advisable by the Commissioner of Indian Affairs to again lease said lands or any of them, the Contractor, or his assigns, shall have the preference right to renew their leases thereon upon such terms and conditions as the Commissioner of Indian Affairs may require."

It will be noted that under this one-sided agreement the Indian is deprived of the use of his allotment and has to wait ten years before he receives any "rental" under the terms of the original lease, and that he has no voice in saying whether the lease shall be renewed. Under the terms of this agreement the Commissioner of Indian Affairs may renew the leases for ninety-nine years if he wishes to do so.

Article XI gives a further advantageous opportunity to Mr. Elliot, or his assigns, in another direction. It provides "that the Contractor shall have the right to sub-lease any of the lands covered by this agreement to satisfactory tenants acceptable to the Commissioner of Indian Affairs, upon terms not inconsistent with the provisions of this agreement."

Judging from what has thus far happened, it is not unreasonable to suppose that any one with sufficient influence to secure such exceptional consideration from the Indian Office as has been shown Mr. Elliot would probably have little difficulty in getting further concessions along this line by which the scheme, instead of being a development project, might be changed into a purely speculative operation. If this were done, Elliot could reap a large financial return without any effort on his part to develop the land—which was ostensibly the main purpose of the Indian Office in approving this agreement. Perhaps this is a matter of more interest and importance to Elliot than to the Pimas, as they are to be "skinned" in any event, and are obliged, under the terms of the agreement, to wait for ten years, if not forever, before receiving any returns, whether direct or otherwise; while Elliot, by sub-leasing, can realize immediately upon his proposition without waiting through the year for the sowing and reaping of cotton crops, with all the uncertainties involved as to the success or failure of the crop or fluctuation in prices in order to reap the benefit of the enterprise. Nothing could better justify the objections urged against the agreement, or more plainly prove its real purpose, than such an assignment.

The Pimas have strenuously objected to the enforcement of this attempt to usurp their right to control the use of their land. Happily, the law protects the Indian allottee in the enjoyment of the lands set apart for his home.

Several years ago the Interior Department directed the allotment of ten acres to each member of the Pima tribe in the Gila

River Reservation, and schedules for allotment followed. About a year ago, and prior to the execution of the agreement with Elliot, another allotment of ten acres was ordered, and schedules for the same are now almost completed.

The Indian right to allotted lands and lands scheduled for allotment is well established. In *Bonifer v. Smith* (166, Fed. Rep., 846-849), decided in 1904, the U. S. Circuit Court of Appeals affirmed this right. In that case the Indian Department has denied the claim for an allotment properly selected and scheduled for a minor child who died before the scheduled selection of land was approved by the Secretary of the Interior. The Court said:

“When a selection has been made and the right to an allotment has attached, the act of the allotting commissioners in wrongfully allotting the lands to another cannot operate to cut off the heir of the person entitled to the allotment. The right of the heir depends not upon what was done by the allotting department, *but upon what ought to have been done.*”

The proposed lease of Pima lands scheduled for allotment is in contravention of the laws cited, since the contract provides that the lease for ten years may be extended indefinitely over the protest of the Indian owner, thus defeating his title and use of the land by indirection. The authority to lease indefinitely is tantamount to voiding the title. We challenge, in law or equity, this claim of right by the Indian Department thus to defeat the title to lands allotted for homes of Indians. It follows from what has been said that this agreement is confiscatory as well as unconscionable.

Cotton is King in the Gila River Valley, and land on which it can be raised commands a good rental, even when in a raw state. No business man having large tracts of such raw land would consider any long term lease on an improvement basis. In the present condition of the land market, the best terms that could be obtained was one year free for the first crop, and after that an annual rental of not less than twenty dollars an acre; and even that would not be for a term longer than five years. We do not believe that such land as the agreement proposed to turn over to Mr. Elliot could be rented from a white man the first year for less than ten dollars an acre; and the value would probably be greater the succeeding years. On that basis, for the first year

alone, it would be equivalent to making Mr. Elliot, or his assigns, a present of \$500,000 from the assets of the Pima Indians.

The cost of putting a ten thousand acre unit in a crop condition—that is, raw land—would probably be about \$100 an acre. It should be noted that on much of this land there is probably sufficient mesquite wood which, if sold for fuel, would bring in a sum that would materially reduce this cost. Ignoring this, however, it can be stated on the basis of what has already been accomplished in the Gila River Valley by white ranchmen, a unit of ten thousand acres, planted with cotton, under efficient management and current conditions as to cost of raising a crop and prices realized, would yield a return of approximately \$200 an acre, or a total of \$2,000,000. As the initial cost of putting this 10,000 acres in a crop condition would be approximately \$1,000,000, the net profit would therefore be \$1,000,000 from ONE UNIT. As Elliot's agreement gives him the right to take over the land leased by him in units of ten thousand acres each annually until he has absorbed the entire tract, multiplying the above profit by five shows a profit of \$10,000,000 per annum, which, upon a conservative estimate, Elliot, or his assigns, may reasonably expect to realize when he has the entire 50,000 acres under cultivation.

And yet the agreement in question proposes to put that fifty thousand acres of land at the disposal of Mr. Elliot for ten years, for practically nothing but the improvements on the land and the seeding in alfalfa of two and one-half acres of each allotment, or the cash equivalent of such seed (\$12.50), AND NOT ONE CENT OF THE PROFITS IS TO GO TO THE INDIANS WHO OWN THE LAND, and who are deprived of its use during the period of the lease.

It is astonishing that any one would have sufficient effrontery to make such a proposition as this Elliot agreement, and more amazing that it should even be considered, much less eagerly accepted and approved, by the Indian Office, which was created for the sole purpose of protecting and defending the Indians and their resources from just such attempted exploitations as this.

For the Commissioner of Indian Affairs to negotiate and enter in secrecy into such an agreement, almost all of the terms of which define and outline the rights of Elliot, or his assigns, and the duty of the Commissioner of Indian Affairs and his subordinates to assist in their enforcement, few, if any, of which terms even suggest any rights for the Indian allottees; and for the

Commissioner, further, to appear as the chief advocate and defender of such an unconscionable and confiscatory agreement, was for him to fail utterly in his duty as the defender of these Indians and the protector of their rights.

One Pima, Jose Mendocia, whose allotment is in one of the districts mentioned in the agreement, last year broke twelve acres of his land, and from his first cotton crop, after paying all expenses, he cleared over \$6,000. He was able to irrigate his field with some waste water out of a canal that runs by his place. What he has done other Pimas can and will do, if they are able to get the water that has been promised them by the Government. If a sufficient quantity of water is furnished these Pima Indians, we believe that they would have practically every available acre of land under cultivation.

The sum of \$400,000 is now available for the construction of a diversion dam across the Gila River, a few miles above the Pima Agency. For years these Indians have been waiting patiently and anxiously for the construction of this diversion dam, and it is expected that sufficient water would thereby be made available to enable them to double their present acreage. BUT—whoever prepared the Elliot agreement may also have had some thought about the possibilities of this diversion dam, as a clause in Article X states that “it is understood and agreed that the Contractor, his assigns or lessees hereunder, may . . . use for irrigation purposes on any lands leased hereunder, floodwater from the Gila River, when such may be available, in the discretion of the Commissioner of Indian Affairs.” It is interesting to observe that much of the land mentioned in the Elliot agreement could be irrigated from the flood waters to be diverted by this dam. The question naturally arises, is this diversion dam to be constructed for the benefit of the Pima Indians, or for the benefit of those who would exploit them?

These Pima Indians have always been industrious and self-supporting; and, moreover, it is their proud boast that they never made war against the white man. This is all the more remarkable when it is considered how their water rights have been shamelessly disregarded by the whites, owing to the failure of the Government, in past years, to act promptly and vigorously in the premises. Now, steps are being taken to remedy that situation by the construction of this diversion dam and other activities;

BUT—if such a proposition as that carried by the Elliot agreement is allowed to stand, then the poor Pima may again be “holding the bag.”

The Commissioner states that so long ago as December, 1918, he was advised of the proposed contract to lease the Pima Lands. While he may have been considering the proposition long prior to that date, by his own admission the matter was being deliberated and confidentially considered for the twelve months following, during all of which time the Pima Indians, owners of the soil, *were kept in ignorance of the plan thus to attack their title and the benefits to be derived from the use of their land for an indefinite period.*

The first knowledge the Association had of this lease was December 22, 1919, one month after its execution, when a letter was received from the Pima reservation asking us to look into the matter. Inquiry at the Indian Office brought the assuring answer that the interests of the Indians were fully protected and that the lease was a good thing.

Meanwhile, further information was deemed desirable, and our Secretary, Mr. Sniffen, was directed to make a first-hand study of the matter. He reached the Pima reservation on January 28, 1920. His investigation developed the facts as shown above that the land in question was in the heart of the district where cotton raising was no longer an experiment; that land values (rental or sales) were high, and that the lease gave no adequate return to the Indians.

On February 4th a meeting of representative Pima Indians was held at Sacaton, at which Mr. Sniffen was present by invitation. Resolutions condemning the lease were unanimously adopted, and the Indian Rights Association was asked by the eighty-one Pimas present to do what it could to block the lease.

Upon receipt of information from Mr. Sniffen showing the real scope of the Elliot agreement, the President of this Association on February 14th addressed a letter on the subject to the President of the United States, urging that he order the withdrawal of the approval of the said agreement by the Department of the Interior and its annulment by the Commissioner of Indian Affairs.

The Indian Office was on record as stating that the lease would not be abrogated. For obvious reasons Mr. Sniffen, under date of February 7, 1920, wrote to Hon. Homer P. Snyder, Chairman of

the House Committee on Indian Affairs, calling attention to the proposed exploitation of the Pimas and urging that his Committee find a way to thwart the scheme. Mr. Snyder was not at Washington when Mr. Sniffen's letter arrived there, but a copy of it was handed to Hon. M. Clyde Kelly of Pennsylvania, the ranking member of the Indian Committee.

On February 17th, Mr. Kelly submitted the following resolution, which was referred to the Committee on Indian Affairs:

*“Resolved, That the Secretary of the Interior be, and he is hereby, directed to send forthwith to the House of Representatives all available information in his department, including the Bureau of Indian Affairs, with reference to the proposed leasing of any of the lands of the Gila River Indian Reservation, Arizona, since January 1, 1919, including copy of any contract or agreement touching the same, and embracing a copy of any contract or agreement made with one W. R. Elliot of Phoenix, Arizona, whereby, as alleged, fifty thousand acres, more or less, of the lands of said Indian reservation may be leased to said Elliot, together with any and all information showing by what authority such contract or lease agreement was entered into; whether such contract was awarded to the highest bidder after due advertisement for sealed bids, or otherwise awarded; and if not so awarded after submitting of sealed bids to state in detail the course which was pursued in determining the rental value of the lands, reciting the names of any and all persons who were consulted in arriving at the consideration contained in said contract or lease, together with a copy of all letters, statements, and other papers on file in his department relating in any wise to said contract of agreement of lease to said Elliot or other person or persons; to state whether or not the Indian owners of said land were consulted so as to ascertain their wishes in the matter; and whether or not the proposed contract or matter of leasing said lands was first submitted to the superintendent in charge of said Gila River Indian Reservation for report upon the advisability of negotiating such lease to W. R. Elliot or other person.”*

On February 27, 1920, the Commissioner of Indian Affairs wrote a lengthy and elaborate defence to Chairman Snyder, abounding in fallacies and sophistries in which he seeks to justify the action of the Indian Office in approving the Elliot agreement. He ignored the various clauses in the Resolution calling for information regarding some very vital points. Apparently the

Indian Office preferred to dodge an explanation of why no bids were received from other parties, why the Pima Indians were kept in ignorance of the proposition during the year it was under consideration, and why Elliot should have been so signally favored. In a section where cotton raising is beyond the experimental stage, and even raw land is at a premium, it is unbelievable that it was impossible to find men not only willing, but anxious, to secure any tracts that were available.

On March 17th, at a meeting of the House Committee on Indian Affairs, Mr. Kelly referred to his resolution and urged that it be considered three days later. Up to this moment the Indian Office had endeavored to uphold the agreement. When, however, Mr. Kelly indicated a determination to press his resolution, the Indian Office capitulated. Assistant Commissioner Meritt, who was present at the March 17th meeting, then stated that the Indian Bureau would not make any other effort to lease the Pima lands without first apprising the Committee of its proposed action. It was therefore deemed unnecessary to further consider the Kelly Resolution. Mr. Meritt's statement was accepted with the understanding that before any lease was approved it would be submitted to the House Indian Committee in order that any objections thereto could be heard.

The action of the Interior Department in fathering this agreement was indefensible and cannot be justified in the light of day, when all the existing conditions as to land values and crop possibilities are understood, especially when it is remembered that any attempts on the part of any official of the United States Government, or any individual, other than the Indians themselves, to lease allotted lands of Indians, or lands scheduled for allotment, is absolutely illegal and utterly void.

As a result of the vigorous protests of the Indian Rights Association, and others, the Elliot agreement has been suspended, for the time being. It ought to be buried so deep that its resurrection is impossible. The stake is a large one, however, and the interests behind the scheme are powerful.

Notwithstanding Mr. Meritt's statement to the House Committee, the Pimas are far from being reassured, which is not surprising in view of the treatment they have received from the Indian Office. Rumor will not down that an effort is to be made to revive this objectionable agreement when the time to do so

seems opportune. The friends of the Pimas must therefore be alert, and ready to take any proper steps necessary, legal or otherwise, to prevent their exploitation.

WM. ALEXANDER BROWN,  
*Vice-President and Chairman Law Committee.*

M. K. SNIFFEN,  
*Secretary I. R. A.*

May I add a word in conclusion to the foregoing statements bearing upon the Pima lease case? I, as President of the Association and a worker during so many years past for Indian rights, have been deeply impressed, and on the whole cheered, by the outcome. We have won a notable victory in forcing the Indian Bureau—we regret to be obliged to use that harsh term—to abandon its support of this measure. This happy result was reached by a combination of forces in which the good work of our Washington Agent, Mr. Brosius, the powerful appeal of Mr. Sniffen from the West; the indefatigable labors of Mr. Wm. Alexander Brown here in Philadelphia, and above all, the quick and generous support of many Bishops of the Episcopal Church, bore a prominent part. The victory has been won by public sentiment, properly organized and quickly expressed in condemnation of a measure which, had it succeeded, would have inflicted a cruel wrong upon an innocent and deserving body of Indians. This cheering success—tentative and incomplete as it is—should stimulate the entire society to go forward in its broad and necessary work of demanding and effecting a complete reform in the lamentable deficiencies of the Indian service. It should inspire every member of the Association with redoubled zeal and bring within the limits of our membership a much larger number of good men and women than we now have.

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